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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS,
Complainant,

v.

STATE OF TEXAS AND JOHN BEN SHEPPERD,
Attorney General of Texas,
Defendants.

BRIEF IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE

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BRIEF IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE

INTRODUCTION

This matter is before the Court on the Return of the defendants to the Rule to Show Cause why the Motion of Complainant for Leave to File Its Complaint should not be granted.

STATEMENT OF THE CASE

The State of Arkansas, as complainant, seeks to invoke the original jurisdiction of this Court under Article III, Section 2, Clause 2, of the Constitution of the United States, and 62 Stat. 927 (1948), 28 U.S.C., Section 1251, to enjoin the State of Texas

and John Ben Shepperd, the Attorney General of the State of Texas, from proceeding with an action pending in the 102nd District Court of Bowie County, Texas. Complainant asks that this Court decree that the State of Arkansas, through its instrumentality, the University of Arkansas, is entitled to Five Hundred Thousand Dollars ($500,000.00) under the contract of The William Buchanan Foundation with the University of Arkansas.

The action which complainant seeks to enjoin and which is presently pending in the 102nd District Court of Bowie County, Texas, is Cause No. 010437-A, which is styled *John Ben Shepperd, Attorney General of Texas v. The William Buchanan Foundation, et al.* In addition to the Foundation, the individual trustees in their capacity as trustees of the Foundation, The Board of Regents of The University of Texas and the individual members in their capacity as members of the Board, the Board of Trustees of the University of Arkansas and the individual members in their capacity as members of the Board were made parties defendant to the suit.

In the First Amended Original Petition filed in this suit in the Texas District Court, the Attorney General of the State of Texas made, among others, the following allegations:

(1) As Attorney General of the State of Texas he is charged with the duty of protecting and enforcing charitable trusts.

(2) William Buchanan executed a trust instrument creating "The William Buchanan Foundation," a charitable trust.

(3) The primary beneficiaries of the Buchanan trust are the residents of Bowie County, Texas, and of the adjoining counties; and the charitable institutions, agencies, means and activities contemplated by the trust are to be established, administered, pursued and carried out in Bowie County, Texas.

(4) The William Buchanan Foundation, a private corporation duly organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas, was chartered for the purpose set forth in the trust deed creating The William Buchanan Foundation.

(5) The William Buchanan Foundation has presently outstanding commitments to the University of Arkansas in the sum of Five Hundred Thousand Dollars ($500,000.00), and to the University of Texas in the sum of Thirty-eight Thousand Dollars ($38,000.00), which commitments, if fulfilled, will violate the announced intent and purpose of the settlor of the trust to the great detriment of the primary beneficiaries of the trust, the residents of Bowie County, Texas, and of adjoining counties.

(6) The William Buchanan Foundation intends to continue the expenditure of the trust funds outside the limits of Bowie County in contravention of the charitable purpose and intent announced in the trust instrument executed by William Buchanan.

The Attorney General prayed the District Court

to declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas, and of the adjoining counties, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas. The Attorney General also prayed that the Foundation be enjoined from fulfilling its commitments to the University of Arkansas and to the University of Texas and that the Foundation be directed to comply in the future with the provisions of the trust instrument.

The State of Arkansas now asks this Court to take jurisdiction of this case to determine the exact issues which are presently before the 102nd District Court of Bowie County, Texas.

SPECIFICATION OF POINTS

I.

The William Buchanan Foundation, a private corporation organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas, is an indispensable party to this suit.

II.

This Court should not entertain this suit unless The William Buchanan Foundation is made a party thereto.

III.

Under established rules for proper alignment of parties, The William Buchanan Foundation, if a party to this suit, would be aligned as co-complainant.

IV.

Absent the consent of the State of Texas, The William Buchanan Foundation cannot be made a co-complainant in this suit.

V.

The William Buchanan Foundation cannot be made a co-complainant in this suit because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

The William Buchanan Foundation cannot be joined as a party defendant in this suit because:

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of jurisdiction.

VII.

Even if The William Buchanan Foundation could properly be joined as a party defendant, this Court

should decline to exercise jurisdiction as a matter of sound equitable discretion because:

A. This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other is not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

ARGUMENT

I.

THE WILLIAM BUCHANAN FOUNDATION IS AN INDISPENSABLE PARTY TO THIS SUIT

This Court has defined indispensable parties as "persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Shields v. Barrow*, 17 How. 130, 139 (1854).

As an abstract definition, it has never been substantially modified, but as this Court said in *Niles-Bement-Bond Co. v. Iron Moulders Union*, 254 U.S. 77, 80 (1920): "There is no prescribed formula for

determining in every case whether a person or corporation is an indispensable party or not."[1] The question is to be determined from all the facts in the case and the nature of the relief sought.[2]

Under the facts of this case, The William Buchanan Foundation is clearly an indispensable party. The right which the State of Arkansas asserts under the contract of The University of Arkansas with the Foundation is so dependent upon the rights and authority asserted by The William Buchanan Foundation in entering into said contract that no final determination of the one can be made without a determination of the extent of the others. Thus to decide the case presented by the Complaint, this Court would have to adjudicate directly upon the Foundation's power to enter into the contract with the University of Arkansas.

The interest of the Foundation in the controversy the State of Arkansas asks this Court to decide is obvious. The Foundation is contesting the suit which the Attorney General of the State of Texas has filed in the 102nd District Court of Bowie County, Texas. If this Court determined that the Foundation's charitable activities must be carried on in Bowie County, Texas, and that the primary beneficiaries of the Buchanan trust were the residents of Bowie County and of the adjoining counties, then the Foun-

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[1] *A. & R. Realty Co. v. Northwestern Life Ins. Co.*, 95 F. 2d 703 (C.C.A. 8th, 1938); *Carroll v. New York Life Ins. Co.*, 94 F. 2d 383 (C.C.A. 8th, 1939).

[2] *Metropolis Theater Co. v. Barkhausen*, 170 F. 2d 481 (C.C.A. 7th, 1948), cert. den. 336 U.S. 945. Authorities defining indispensable parties are collected in 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, § 2140, pp. 206-211.

dation would be precluded not only from fulfilling the commitments made to the Universities of Arkansas and Texas but also from entering into similar commitments in the future.

II.

THIS COURT SHOULD NOT ENTERTAIN THIS SUIT UNLESS THE WILLIAM BUCHANAN FOUNDATION IS MADE A PARTY

As shown in the foregoing point, The William Buchanan Foundation is an indispensable party to this suit in that it asserts a right which is inseparably connected with the rights asserted by the parties herein.

In *California v. Southern Pacific Company*, 157 U.S. 229 (1894), the Court said at pp. 249 and 257:

> "It was held in Mallow v. Hinde, 12 Wheat. 193, 198, that where an equity cause may be finally decided between the parties litigant without bringing others before the court who would, generally speaking, be necessary parties, such parties may be dispensed with in the Circuit Court if its process cannot reach them or if they are citizens of another State; but if the rights of those not before the court are inseparably connected with the claim of the parties litigant so that a final decision cannot be made between them without affecting the rights of the absent parties, the peculiar constitution of the Circuit Court forms no ground for dispensing with such parties. And the court remarked: 'We do not put this case upon the ground of jurisdiction, but upon a much broader ground,

which must equally apply to all courts of equity whatever may be their structure as to jurisdiction. We put it upon the ground that no court can adjudicate directly upon a person's right, without the party being actually or constructively before the court.'

"...

"... We have no hesitation in holding that when an original cause is pending in this court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

The axiom that there can be no dispensing with indispensable parties is so elementary as to require mere statement without discussion. 24 Minn. L. Rev. 703, 704.

III.

UNDER ESTABLISHED RULES FOR PROPER ALIGNMENT OF PARTIES, THE WILLIAM BUCHANAN FOUNDATION, IF A PARTY TO THIS SUIT, WOULD BE ALIGNED AS CO-COMPLAINANT

Since the prime object of all litigation is to establish a right asserted by the plaintiff or to sustain a defense set up by the party pursued,[1] the determi-

[1] *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 406 (1900).

nant factor in aligning parties is the ascertainment of the interest of the parties. The general rule has been stated to be that "the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative."[4] Therefore parties should be aligned as plaintiffs or defendants according to their interest in the right asserted against the ones who are alleged to have injured them in such right.[5]

The State of Arkansas in its Complaint asserts a right to five hundred thousand dollars under the contract of The University of Arkansas with The William Buchanan Foundation. The Foundation, in the suit pending in the 102nd District Court of Bowie County, Texas, asserts, in effect, that that contract is valid and that the State of Arkansas is entitled to five hundred thousand dollars. The State of Arkansas in its Complaint asserts that the Attorney General of the State of Texas has injured the State of Arkansas in its right to five hundred thousand dollars. The Foundation, in the suit pending in the 102nd District Court of Bowie County, Texas, has, in effect, concurred in this assertion. Both the Foundation and The University of Arkansas take the position, as opposed to that taken by the defendants herein, that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas, and of the adjoining counties. Therefore, under recognized rules for the proper alignment of parties, The

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[4] Id. p. 407 quoting Chitty, *Pleading*, p. 1.

[5] 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, § 2128, p. 195.

William Buchanan Foundation, if a party to this suit, would be aligned as a co-complainant.

IV.

The William Buchanan Foundation Cannot Be Made Co-Complainant In This Suit Absent The Consent Of The State Of Texas

The original jurisdiction of this Court with respect to suits in which a state is a party is limited not only by the Eleventh Amendment to the Constitution which precludes suit against a state "by citizens of another state, or by citizens or subjects of any foreign state" but also by the principle of sovereign state immunity from suit which prevents suit against a state by its own citizens absent the consent of the state.* In *Ex Parte State of New York, No. 1*, 256 U. S. 490 (1920), at p. 497, this Court said:

> "That a state may not be sued without its consent is a fundamental rule of jurisprudence, having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by citizens of another state, or by citizens or subjects of a foreign state, because of the 11th Amendment; and not even one brought by its own citizens, because of the fundamental

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* 1 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 2, § 85, p. 173; *California v. Southern Pacific Co.*, 157 U.S. 229 (1894); *Duhne v. New Jersey*, 251 U.S. 311 (1920); *Hans v. Louisiana*, 134 U.S. 1 (1889).

rule of which the amendment is but an exemplification."

The William Buchanan Foundation is a private corporation, organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas. It is, of course, well settled that a corporation created by a State is a citizen of the State within the meaning of those provisions of the Constitution and statutes of the United States which define the jurisdiction of the federal courts.[1] This being so, the Foundation cannot be made co-complainant in this suit since the State of Texas has not consented to be sued.

V.

THE WILLIAM BUCHANAN FOUNDATION CANNOT BE MADE A CO-COMPLAINANT IN THIS SUIT BECAUSE JURISDICTION IS DEPENDENT UPON THE STATE OF ARKANSAS BEING THE MOVING PARTY

In *California v. Southern Pacific Company*, 157 U.S. 229 (1894), California, by leave of Court, filed a bill in equity against the Southern Pacific Company. The bill was dismissed because of the absence of indispensable parties. The City of Oakland, one of said parties, had moved for leave to be joined by

[1] *Paul v. Virginia*, 8 Wall. 168, 178 (1868); *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518 (1851); *Kansas Pacific Railroad v. Atchison-Topeka & Santa Fe Railroad*, 112 U.S. 414 (1884); *Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 287 (1888).

intervention as co-complainant. In explaining why the motion was denied, the Court said at p. 256:

> ". . . As original jurisdiction only subsisted in that the State was party, and the moving party, (Eleventh Amendment; Hans v. Louisiana, 134 U.S. 1,) the motion of the city was denied."

So, too, in this case, The William Buchanan Foundation could not be made a co-complainant because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

THE WILLIAM BUCHANAN FOUNDATION CANNOT BE MADE A PARTY DEFENDANT IN THIS SUIT

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

Although it has been said that under equitable principles parties have no fixed standing as plaintiff and defendant, but may be realigned for jurisdictional purposes, there can be, nevertheless, a situation in which a certain person should be on the plaintiff side of the record.*

Such is the situation presented by the facts of this case. In the suit filed in the 102nd District Court of Bowie County, Texas, the State of Texas has challenged the authority of The William Buchanan Foundation to enter into the contract with the University

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* 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, §§ 2128, 2129, pp. 194-196.

of Arkansas. The interests of the State of Texas and of the Foundation are in direct conflict. Moreover, the rights asserted by the State of Arkansas are dependent upon the Foundation's power to enter into the contract. Clearly, the position of the Foundation in this suit is that of an indispensable plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of jurisdiction.

This Court has said, on more than one occasion,* that in ascertaining whether it has original jurisdiction of a particular case, it will look to the actualities of the situation.

If The William Buchanan Foundation were made a party defendant in this suit, the principle of sovereign immunity from suit, discussed supra in Point IV, would be violated because the Foundation would actually be asserting a right against the State of Texas, to which assertion the State has not consented. As stated in *Duhne v. New Jersey*, 251 U. S. 311 (1920), at page 313, "the whole sum of the judicial power granted by the Constitution to the United States does not embrace the authority to entertain a suit brought by a citizen against his own state without its consent." Therefore, making the Foundation a defendant in this suit would result in ousting the jurisdiction of this Court.

In *California v. Southern Pacific Company*, 157

* *Louisiana v. Texas*, 176 U.S. 1 (1899); *Massachusetts v. Missouri*, 308 U.S. 1 (1939).

U. S. 229 (1894), the Court held that the original jurisdiction of this Court did not extend to a suit between a State on the one side and citizens of another state and citizens of the same state on the other side. California's bill in equity, filed by leave of Court, named only the Southern Pacific Company as defendant. The Court held that both the City of Oakland and the Oakland Water Front Company were indispensable parties. The City of Oakland had been denied a motion for leave to be joined by intervention as a co-complainant on the ground that original jurisdiction could exist only by virtue of a state being the moving party. In holding that the indispensable parties could not be made defendants, the Court said at pp. 258 and 261-262:

> "Under the Constitution the cases in which a State may be a party are those between two or more States; between a State and citizens of another State; between a State and foreign States, citizens, or subjects; and between the United States and a State, as held in United States v. Texas, 143 U.S. 621. By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a State is a party, but not of controversies between a State and its own citizens, and original but not exclusive jurisdiction of controversies between a State and citizens of another State or aliens.
>
> ". . .
>
> "It was held at an early day that Congress could neither enlarge nor restrict the original jurisdiction of this court, Marbury v. Madison, 1 Cranch, 137, 173, 174, and no attempt to do

so is suggested here. The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction. What Congress may have power to do in relation to the jurisdiction of Circuit Courts of the United States is not the question, but whether, where the Constitution provides that this court shall have original jurisdiction in cases in which the State is plaintiff and citizens of another State defendants, that jurisdiction can be held to embrace a suit between a State and citizens of another State and of the same State. We are of opinion that our original jurisdiction cannot be thus extended, and that the bill must be dismissed for want of parties who should be joined, but cannot be without ousting the jurisdiction."[10]

The William Buchanan Foundation, a private corporation, duly organized and established under the laws of the State of Texas, is a citizen of the State of Texas." Again looking to the actualities of the situation presented by this case, making the Foundation a party defendant would not, of course, change the Foundation's interest in this suit. That interest is diametrically opposed to the interest asserted by the State of Texas. This court has no original jurisdiction to determine the issues between the State of Texas and a citizen of the State of Texas.

Complainant cites *Texas v. Florida*, 306 U.S. 398 (1939) as authority for making the Foundation a

[10] *Paul v. Virginia*, 8 Wall. 168, 178 (1868); *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518 (1851); *Kansas Pacific Railroad v. Atchison Topeka & Santa Fe Railroad*, 112 U.S. 414 (1884); *Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 287 (1888).

party defendant in this suit." In that case an original suit, in the nature of a bill of interpleader, was brought to determine the true domicile of a decedent as the basis for rival claims of four states for death taxes upon his estate. In addition to the State of Florida, New York and the Commonwealth of Massachusetts, the decedent's wife, Mabel Harlow Green, and the decedent's sister Hetty Sylvia Ann Howland Green, both alleged to be residents of New York, were made defendants. The answer of decedent's wife admitted that he was domiciled in Texas and asserted that under Texas law she owned substantially one-half of the estate acquired by decedent after their marriage free and clear of death taxes. Pursuant to stipulation showing that she had released all interest in decedent's estate, the suit was dismissed as to her. Decedent's sister filed an answer denying that Green was domiciled in Texas and asking the Court to determine in which of the defendant states he was domiciled for the purposes of taxation. Thus the one remaining individual defendant was not a citizen of the plaintiff state nor was she taking issue with any of the defendant states. This being so, the real issue in the suit was between states, and as the Court said, "the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states . . . [were] properly made parties defendant." Here The William Buchanan Foundation is not a necessary or proper party but is an indispensable party. The basic controversy is not between the State of Arkansas and

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[11] Brief on Motion for Leave to File Bill of Complaint for Complainant, p. 16.

the State of Texas but between the State of Texas and the Foundation. *Texas v. Florida*, supra, is therefore not authority for making the Foundation a party defendant in this suit.

VII.

Even If The William Buchanan Foundation Could Properly Be Joined As A Party Defendant, This Court Should Decline To Exercise Jurisdiction As A Matter Of Sound Equitable Discretion

A. This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other is not mandatory.

Section 1251 of Title 28, U.S.C., provides, in part, as follows:

> "(a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> (1) All controversies between two or more States;
>
> (2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.
>
> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
>
> . . .
>
> . . .
>
> (3) All actions or proceedings by a State against the citizens of another State
>
> . . ."

This court has original and exclusive jurisdiction only of controversies involving those parties specifically enumerated in Subsection (a). It's jurisdiction over the types of cases ennumerated in Subsection (b) is original but not exclusive.

The exercise of original jurisdiction in cases ennumerated in Article III, Section 2, Clause 2 of the Constitution of the United States "is not mandatory in every case."[12]

If The William Buchanan Foundation were made a party defendant in this suit, it would then be a case between a State on the one side and another State and a citizen of the latter state on the other.

Even if this court concluded that the William Buchanan Foundation could be made a party defendant in this case without ousting the original jurisdiction of this court, defendants submit that jurisdiction over the hybrid parties would not be exclusive and hence, not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other not being mandatory, this Court should decline to exercise jurisdiction because the interests of convenience, efficiency and justice will be better served by full devel-

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[12] *Georgia v. Pennsylvania Ry.*, 324 U.S. 439, 464 (1945); *Georgia v. Chattanooga*, 264 U.S. 472, 483 (1924); *Oklahoma v. Cook*, 304 U.S. 387, 396 (1938); *Massachusetts v. Missouri*, 308 U.S. 1, 19 (1939).

opment of the evidence in the 102nd District Court of Bowie County, Texas, with customary appeal, than before a master in an original proceeding in this Court.

In numerous decisions this Court has recognized the discretionary right of a court in the interests of convenience, efficiency and justice, to withhold the exercise of the jurisdiction conferred upon it where there is another suitable forum in which the cause may be determined. *Georgia v. Pennsylvania Ry.*, 324 U. S. 439, 464 (1945); *Massachusetts v. Missouri*, 308 U.S. 1, 19 (1939); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947); *Koster v. Lumbermens Mut. Casualty Co.*, 330 U.S. 518, 527 (1947); *Kansas City Southern Ry. v. United States*, 282 U.S. 760 (1931).

In *Massachusetts v. Missouri*, supra at page 19, the Court said:

> "We have observed that the broad statement that a court having jurisdiction must exercise it (See *Cohens v. Virginia*, 6 Wheat 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co. v. Paterson Shipbuilders*, 285 U.S. 413, 422; *Rogers v. Guaranty Trust Co.*, 288 U.S. 123, 130, 131. Grounds for justifying such a qualification have been found in 'considerations of convenience, efficiency and justice' applicable to particular classes of cases. *Rogers v. Guaranty Trust Co.*, supra . . ."

The following was said in *Rogers v. Guaranty Trust Co. of New York*, supra, at page 131:

". . . it safely may be said that jurisdiction will be declined whenever considerations of convenience, efficiency and justice point to the courts of the state of the domicile as appropriate tribunals for the determination of the particular case . . ."

In *Koster v. Lumbermens Mut. Casualty Co.*, supra, at page 527, it is said: ". . . the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice."

The evidence, documentary and otherwise, can be brought more easily before the District Court of Bowie County, Texas, such court being in proximity to the witnesses and documents as well as counsel for all parties. Moreover, the execution of the duty of the Attorney General to see that all trusts or gifts for charitable purposes are faithfully administered and fully effectuated will be seriously hampered if this Court sets a precedent of exercising jurisdiction in such instances.

Hundreds of charitable trusts are in existence in the State of Texas, alone. The task and expense of enforcement is not insignificant. It should not be assumed that instances in which questionable donations of the trust funds are made to agencies of other states are rare, nor that it will only occasionally be necessary to resort to the courts for a construction of the powers conferred in the trust instrument. The precedent which will be set if this Court fails to avail itself of its discretionary right to withhold the exercise of its jurisdiction will open its doors to numerous attempts to forestall the execution of the duties of those state officials charged

with enforcement of charitable trusts, will add to the already voluminous work of this Court, and will tend to take jurisdiction from the state courts which should properly enforce such trusts.

The above factors coupled with the fact that administration of public trusts may be more expeditiously carried out under the supervision of a court in proximity to the place of such administration are important considerations in determining whether this Court should take jurisdiction of this case or exercise its discretionary right to decline jurisdiction, since it is proper for the Court to consider "all other practical problems that make trial of a case easy, expeditious and inexpensive."[13]

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

As early as 1793, severe restrictions upon the power of federal courts to interfere with the actions and proceedings before state courts were imposed by Congress.[14] Section 2283, Title 28, of the United States Code provides for such restrictions as follows: "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or

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[13] *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

[14] *International Union of Operating Engineers, Locals No. 542, 542-A, 542-B v. William D. Baker Co.*, 100 F. Supp. 773 (E. D. Pa., 1951).

effectuate its judgments." The prohibition embodied in this Act has been held to be the adoption by Congress of what the federal and state courts "had already found to be good manners,"[15] based on the principles of comity.

Pursuant to this Act, the federal courts have held that a federal court may enjoin state court proceedings only when it has acquired jurisdiction before the state court has obtained jurisdiction;[16] that the prohibition extends to proceedings which necessarily have an injunctive effect as well as to injunctions directly restraining state court proceedings;[17] and that the prohibition prevents interference by a federal court with an action for injunction brought in a state court even though exclusive jurisdiction in the federal court was alleged.[18]

In *Oklahoma Packing Company v. Oklahoma Gas & Electric Co.*, 309 U.S. 4 (1939), at pages 8 and 9, this Court said:

> "The present suit, therefore, is one for an injunction 'to stay proceedings' previously begun in a state court. The decree below is thus within the plain interdiction of an Act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon a limitation of the power of the federal courts dating almost from the beginning

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[15] *In re Walker Grain Co.*, 294 F. 951 (N. D. Tex., 1923).

[16] *Puget Sound Power & Light Co. v. Asia*, 277 Fed. 1 (C.C.A. 9th, 1922), cert. den., 258 U.S. 619.

[17] *Harrison v. Triplex Gold Mines, Ltd.*, 33 F. 2d 667, 672 (C.C.A. 1st, 1929).

[18] *International Union of Operating Engineers, Locals No. 542, 542-A, 542-B v. William D. Baker Co.*, 100 F. Supp. 773 (E. D. Pa., 1951).

> of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts. . . . (citing cases). That the injunction was a restraint of the parties and was not formally directed against the state court is immaterial. Hill v. Martin, 296 U.S. 383, 403, 56 S. Ct. 278, 80 L. Ed. 293."

Complainant asks this Court to enjoin further proceedings in the 102nd District Court of Bowie County, Texas, by the Attorney General of the State of Texas. The Complaint shows upon its face that said suit in the Bowie County District Court, involving the identical facts, the identical parties and the identical questions of law is now pending and was pending at the time complainant filed its Motion for Leave to File Bill of Complaint in this Court.

For this Court to assert jurisdiction in such an instance would be in direct contravention of an Act of Congress and former decisions of this Court which prohibit interference with such state court proceedings by the federal courts.

As held in *Oklahoma Packing Company v. Oklahoma Gas & Electric Co., supra,* the fact that the Bill is to enjoin the parties to the suit and is not to enjoin the state court directly does not take this Complaint but of the prohibition against interference by the federal courts.

Complainant further alleges that the District Court of Bowie County, Texas, is without jurisdiction in this suit. But even where, as here, it is alleged that exclusive jurisdiction is in a federal court, in-

terference with a suit in a state court is within the prohibition."[19] Furthermore, this Court should not presume that the District Court of Bowie County will proceed without regard to the question of jurisdiction. This principle is asserted as follows in *United Electrical Radio & Machine Workers of America v. Westinghouse Electric Corporation*, 65 F. Supp. 420 (E. D. Pa., 1946):

> "Moreover, whether the particular proceeding is, in whole or in part, one within the jurisdiction of the state court, and whether that court has power to grant the remedy prayed for, are questions which may be capably determined by that court, and error is a matter of appellate review. The question of jurisdiction, if at all involved, is appropriately one for the decision of the state court and could manifestly be presented and determined in the action there. *Kohn v. Central Distributing Co.*, 1939, 306 U.S. 531, 534, 509 S. Ct. 689, 83 L. Ed. 965."

Therefore it is submitted that even if The William Buchanan Foundation could properly be joined as a party defendant, this Court, in the exercise of judicial restraint, should refuse to interfere with the suit pending in the 102nd District Court of Bowie County, Texas, and decline to exercise jurisdiction.

CONCLUSION

For all the foregoing reasons defendants strongly

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[19] *H. J. Heinz Co. v. Owens*, 189 F. 2d 505 (C.C.A. 9th, 1951).

urge that the motion for leave to file the Complaint should be denied.

Respectfully submitted,

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